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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

_____	)	
Nick Ialacci, Cade Miller, Samuel Smith,	)	
Terry Shapiro, Dawn Johnson, Zachary	)	
Goodale, Jay Loeffel, and Bradley	)	<b>CIVIL ACTION No:</b>
Miller, individually and on behalf of all	)	
others similarly situated,	)	<b>COMPLAINT FOR NEGLIGENCE; AND</b>
	)	<b>VIOLATIONS OF FCRA, STATE</b>
Plaintiffs,	)	<b>CONSUMER PROTECTION STATUTES,</b>
	)	<b>AND STATE DATA BREACH STATUTES</b>
v.	)	
	)	<b>DEMAND FOR JURY TRIAL</b>
Equifax, Inc.,	)	
	)	<b>CLASS ACTION</b>
Defendant.	)	
_____	)	

By and through their undersigned counsel, Plaintiffs, individually and on behalf of all others similarly situated, bring this action for damages and injunctive relief against Defendant Equifax, Inc. (“Equifax”). Plaintiffs allege, based on information and investigation of counsel, as follows:

**NATURE OF THE ACTION**

1. On September 7, 2017, Equifax announced one of the largest and most severe data breaches in history (referred to hereinafter as the “Equifax Data Breach”), admitting

1 that the personal and confidential information of as many as 143 million Americans –  
2 almost half the country’s population – had been compromised or disclosed to unauthorized  
3 third parties between mid-May and July 2017.<sup>1</sup>

4         2.       The information accessed included names, Social Security numbers, birth  
5 dates, addresses and, in some instances, driver’s license numbers (this information is  
6 commonly referred to as personally identifiable information (“PII”)). In addition, credit  
7 card numbers for approximately 209,000 U.S. consumers, and certain dispute documents  
8 with PII for approximately 182,000 U.S. consumers, were accessed.<sup>2</sup>

9         3.       This is a consumer class action suit brought by Plaintiffs, individually and  
10 on behalf all other similarly situated persons whose PII and credit account information was  
11 made accessible to thieves or other third parties after being entrusted to, and while in the  
12 possession, custody, and control of, Defendant Equifax. This information is private and  
13 sensitive in nature, and Equifax failed to adequately protect it. Equifax did not obtain  
14 consent or permission from Plaintiffs or any of the Class members to disclose their PII,  
15 credit account, or other personal and confidential information to any other person or entity,  
16 as would be required for such disclosure by applicable law and industry standards prior to  
17 any such disclosure.

18         4.       Equifax discovered the data breach in July 2017, but failed to publicly report  
19 it or otherwise alert those affected until September 7, 2017, when it finally issued a press  
20 release.<sup>3</sup>

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22 <sup>1</sup> CNN, <http://money.cnn.com/2017/09/07/technology/business/equifax-data-breach/> (last  
23 visited Sept. 19, 2017).

24 <sup>2</sup> Equifax, *Equifax Announces Cybersecurity Incident Involving Consumer Information*  
25 (Sept. 7, 2017), available at <https://investor.equifax.com/news-and-events/news/2017/09-07-2017-213000628>.

26 <sup>3</sup> When Equifax did get around to letting anyone know the breach had occurred, it  
27 directed those affected to a website where Equifax asked them to disclose even more PII  
and tried to sell them the company’s own credit monitoring service. *See* Fortune Insider,

1           5. In its press release, Defendant Equifax failed (or refused) to provide any  
 2 substantive information as to how the breach actually occurred, choosing instead to  
 3 attribute it to an unspecified “application vulnerability.”<sup>4</sup> Apparently trying to downplay  
 4 its significance, Equifax Chairman and Chief Executive Officer Richard Smith  
 5 dismissively described the Equifax Data Breach as “a disappointing event for our  
 6 company.”<sup>5</sup>

7           6. The Equifax Data Breach is even more “disappointing” for those, including  
 8 Plaintiffs and the Class members, who are among the 143 million Americans who have had  
 9 their most sensitive PII and credit account information exposed by reason of Equifax’s  
 10 conduct in: (a) failing to adequately protect that information; (b) failing to inform Plaintiffs  
 11 and the Class members that it did not have adequate systems or security processes,  
 12 protocols, or practices in place to safeguard that information; (c) failing to prevent the  
 13 Equifax Data Breach from occurring; (d) failing to mitigate the effects of the Equifax Data  
 14 Breach; and (e) failing to provide timely notice of the Equifax Data Breach after its  
 15 occurrence.

16           7. Ultimately, Equifax intentionally, willfully, recklessly and/or negligently  
 17 failed to protect the PII and credit account information of Plaintiffs and the Class members  
 18 from unauthorized disclosure. As a result, Plaintiffs and the Class members have been  
 19 damaged and remain at substantial and continuing likelihood for identity theft/fraud.  
 20 Indeed, financial experts have opined that victims of a data breach are 9.5 times more likely  
 21 to be a victim of identity fraud than are members of the general public.<sup>6</sup> Accordingly,

22 \_\_\_\_\_  
 23 *Is Equifax Going to Be Punished for Losing Our Data?* (Sept. 12, 2017), available at  
<http://fortune.com/2017/09/12/equifax-data-breach-2017-security-hacked/>.

24 <sup>4</sup> *Id.*

<sup>5</sup> *Id.*

25 <sup>6</sup>Intersections, Inc., *Identity Fraud Rose in 2011 Based on Findings from the Recently*  
 26 *Release 2012 Identity Fraud Report by Javelin Strategy & Research* (Feb. 22, 2012),  
 27 available at [http://invest-media.intersections.com/phoenix.zhtml?c=175233&p=irol-](http://invest-media.intersections.com/phoenix.zhtml?c=175233&p=irol-newsArticle_Print&ID=1663910)  
[newsArticle\\_Print&ID=1663910](http://invest-media.intersections.com/phoenix.zhtml?c=175233&p=irol-newsArticle_Print&ID=1663910).

1 Plaintiffs and the Class members now “need to be hyper vigilant and monitor their  
2 accounts” for fraudulent activity.<sup>7</sup>

3 8. As a direct and proximate result of Equifax’s intentional, willful, reckless  
4 and/or negligent acts and omissions, of its violation of state and federal statutes, and of the  
5 resulting Equifax Data Breach, over 143 million individuals in the United States –  
6 including Plaintiffs and the Class members – have had their PII and credit account  
7 information exposed to fraud and identity theft, and have suffered injuries including but  
8 not limited to:

- 9 a. theft or misuse of their personal and financial information;
- 10 b. substantial immediate and continuing likelihood for identity  
11 theft/fraud;
- 12 c. costs associated with the detection and prevention of identity  
13 theft/fraud and unauthorized use of their personal information and/or  
14 financial accounts;
- 15 d. unauthorized charges on their debit and credit accounts;
- 16 e. lost use of, or limitation of access to, account funds and costs  
17 associated therewith, including missed payments on bills or loans, late  
18 charges and fees, negative effects on credit (e.g., decreased credit  
19 scores and adverse credit notations), etc.;
- 20 f. loss of productivity and other costs associated with efforts necessary  
21 to ameliorate or mitigate the present and future consequences of the  
22 Equifax Data Breach, including watching for and finding fraudulent  
23 charges, cancelling and reissuing cards, purchasing credit monitoring  
24 and identity theft protection services, imposition of withdrawal and  
25 purchase limits on compromised accounts, and the stress, nuisance  
26 and annoyance of dealing with all issues resulting from the Equifax  
27 Data Breach;

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<sup>7</sup> CBS News, *Equifax hack “basically the Irma of data breaches,” expert says* (Sept. 8, 2017), available at <https://www.cbsnews.com/news/equifax-hack-basically-the-irma-of-data-breaches-expert-says/>.

- g. damages to, and diminution in value of, their personal and financial information, which was entrusted to Equifax for the sole purpose of reporting and/or monitoring their credit profiles and with the mutual understanding that Equifax would safeguard that information from access, theft, or misuse;
- h. money paid for products or services purchased from Equifax (e.g., credit monitoring, credit score inquiry) prior to the Equifax Data Breach, as Plaintiffs and the Class members would not have purchased such products or services had Equifax disclosed its lack of adequate security systems, processes, and protocols to reasonably safeguard their personal and financial information; and/or
- i. continued substantial risk to their personal and financial information, which remains in the possession of Equifax and which is subject to further breaches so long as Equifax fails to undertake appropriate and adequate measures to protect it.

9. Plaintiffs, on behalf of themselves and all others similarly situated, seek to remedy these harms, and to prevent their future occurrence. To that end, they are asserting claims against Equifax for negligence, violations of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681, *et seq.*; violation of state consumer protection laws, and violation of state data breach statutes. They seek to recover damages, including actual and statutory damages, to obtain equitable relief (including injunctive relief, restitution, disgorgement), and to recover costs and reasonable attorney fees as permitted by law.

10. Plaintiffs have standing to bring this class action on behalf of themselves and the Class members because they were damaged as a direct and proximate result of Equifax's wrongful conduct and the Equifax Data Breach resulting therefrom.

## **PARTIES**

### **A. PLAINTIFFS**

11. Plaintiff Nick Ialacci is a resident of Los Angeles County, California. As confirmed by Equifax, Plaintiff Ialacci's PII and/or credit account information was

1 included in the Equifax Data Breach and was disclosed to unauthorized third parties and,  
2 therefore, was harmed as a direct and proximate result thereof.

3 12. Plaintiff Samuel Smith is a resident of Denver Colorado. As confirmed by  
4 Equifax, Plaintiff Smith's PII and/or credit account information was included in the  
5 Equifax Data Breach and was disclosed to unauthorized third parties and, therefore, was  
6 harmed as a direct and proximate result thereof.

7 13. Plaintiff Terry Shapiro is a resident of Lakeworth, Florida. As confirmed by  
8 Equifax, Plaintiff Shapiro's PII and/or credit account information was included in the  
9 Equifax Data Breach and was disclosed to unauthorized third parties and, therefore, was  
10 harmed as a direct and proximate result thereof.

11 14. Plaintiff Dawn Johnson is a resident of Glencoe, Illinois. As confirmed by  
12 Equifax, Plaintiff Johnson's PII and/or credit account information was included in the  
13 Equifax Data Breach and was disclosed to unauthorized third parties and, therefore, was  
14 harmed as a direct and proximate result thereof.

15 15. Plaintiff Cade Miller is a resident of Edina, Minnesota. As confirmed by  
16 Equifax, Plaintiff Cade Miller's PII and/or credit account information was included in the  
17 Equifax Data Breach and was disclosed to unauthorized third parties and, therefore, was  
18 harmed as a direct and proximate result thereof.

19 16. Plaintiff Zachary Goodale is a resident of Dover, New Hampshire. As  
20 confirmed by Equifax, Plaintiff Zachary Goodale's PII and/or credit account information  
21 was included in the Equifax Data Breach and was disclosed to unauthorized third parties  
22 and, therefore, was harmed as a direct and proximate result thereof.

23 17. Plaintiff Jay Loeffel is a resident of New York, New York. As confirmed by  
24 Equifax, Plaintiff Loeffel's PII and/or credit account information was included in the  
25 Equifax Data Breach and was disclosed to unauthorized third parties and, therefore, was  
26 harmed as a direct and proximate result thereof.

1           18. Plaintiff Bradley Miller is a resident of Appleton, Wisconsin. As confirmed  
2 by Equifax, Plaintiff Bradley Miller's PII and/or credit account information was included  
3 in the Equifax Data Breach and was disclosed to unauthorized third parties and, therefore,  
4 was harmed as a direct and proximate result thereof.

5           19. As a direct and proximate result of Defendant Equifax's wrongful acts or  
6 omissions (as set forth fully herein) and the resulting data breach, each Plaintiff, and each  
7 of the Class members, has suffered actual harm and has been placed at imminent substantial  
8 and continuing risk for identity theft or identity fraud (as Equifax has conceded in its recent  
9 press releases and by its creation of a urging consumers to sign up for credit file monitoring  
10 and identity theft protection).<sup>8</sup>

11           20. As a direct and proximate result of Defendant Equifax's wrongful acts or  
12 omissions and the resulting Equifax Data Breach, each Plaintiff, and each Class member,  
13 has spent time, and will continue to spend time and effort in the future, monitoring their  
14 financial accounts. Additionally, the PII and/or credit account information of each Plaintiff  
15 and each Class member has been placed at a substantially increased risk of identity  
16 fraud/theft or other misuse, thus requiring them to take protective measures they would not  
17 have had to take but for the Equifax Data Breach. Any additional misuse of Plaintiffs' or  
18 the Class members' PII or credit account information will result in additional damages.

19           **B. DEFENDANT**

20           21. Defendant Equifax is a Georgia corporation with its headquarters in Atlanta,  
21 Georgia.

22           22. Defendant Equifax has numerous offices throughout California and in this  
23 District, including in Palo Alto, San Rafael, Concord, Panorama City, and Moonpark.

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25  
26           <sup>8</sup> See Equifax, *Equifax Announces Cybersecurity Incident Involving Consumer*  
27 *Information* (Sept. 7, 2017), available at <https://investor.equifax.com/news-and-events/news/2017/09-07-2017-213000628>



1 Further, TrustedID, Equifax's wholly-owned subsidiary and provider of credit monitoring  
2 services following the Equifax Data Breach, is headquartered in Palo Alto, California.

3 23. Defendant Equifax is a "consumer reporting agency" within the meaning of  
4 the FCRA – specifically 15 U.S.C. § 1681a(f) – in that Equifax, "for monetary fees . . .  
5 regularly engages in whole or in part in the practice of assembling or evaluating consumer  
6 credit information or other information on consumers for the purpose of furnishing  
7 consumer reports to third parties, and which uses any means or facility of interstate  
8 commerce for the purpose of preparing or furnishing consumer reports."

### 9 **JURISDICTION**

10 24. This Court has subject matter jurisdiction over this action under 28 U.S.C. §  
11 1331 because Plaintiffs' FCRA claims arise under the laws of the United States.

12 25. This Court has also has subject matter jurisdiction over this action under the  
13 Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), because at least one class member is a  
14 citizen of a state that is diverse from Defendant Equifax and the amount in controversy  
15 exceeds \$5 million, exclusive of interest and costs. There are more than 100 Class  
16 members.

17 26. This Court has personal jurisdiction over Defendant Equifax because: (a) it  
18 regularly transacts business in the California (and the other 49 states) and in this District;  
19 (b) it intentionally avails itself of this jurisdiction by directly or indirectly marketing and  
20 selling its goods or services throughout the United States, including in this District; (c) it  
21 has substantial aggregate contacts with this District; and/or (d) it has purposefully availed  
22 itself of the laws of the United States and the State of California.

### 23 **VENUE AND INTRADISTRICT ASSIGNMENT**

24 27. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because  
25 a substantial part of the events or omissions giving rise to the claims occurred in this  
26



1 District, including the actions of Trusted ID, which is a wholly owned subsidiary of  
 2 Defendant Equifax located in Santa Clara county.

3 28. For the same reason, this case should be assigned to the Court's San Jose  
 4 division.

### 5 **FACTUAL ALLEGATIONS**

6 29. The FCRA was enacted to promote the accuracy and privacy of consumer  
 7 information contained in the files of consumer reporting agencies, and it regulates the  
 8 collection, dissemination, and use of consumer information, including consumer credit  
 9 information.

10 30. Consumer reporting agencies ("CRAs") are entities that collect and  
 11 disseminate information about consumers to be used for credit evaluation and certain other  
 12 statutorily enumerated purposes, including employment. There are three major CRAs, of  
 13 which Defendant Equifax is one (the other two being TransUnion and Experian).

14 31. As a CRA, Equifax knows or should know of its legal obligations regarding  
 15 the protection of sensitive consumer personal and credit information, as those obligations  
 16 are clearly defined in the FCRA, federal regulations enacted pursuant thereto,<sup>9</sup> and  
 17 promulgations of the Federal Trade Commission (FTC).<sup>10</sup>

18 32. In 1899, Equifax was founded in Atlanta, Georgia as a Retail Credit  
 19 Company. It currently organizes, assimilates, and analyzes data on more than 820 million  
 20 consumers and more than 91 million businesses worldwide, and its database includes  
 21 employee data contributed from more than 7,100 employers.

24 <sup>9</sup> See, e.g., 15 C.F.R. Part 600, Appendix A to Part 601 - - Prescribed Summary of  
 25 Consumer Rights; Appendix B to Part 601 - - Prescribed Notice of Furnisher  
 26 Responsibilities; Appendix C to Part 601 - - Prescribed Notice of User Responsibilities.

27 <sup>10</sup> See, e.g., 55 Fed. Reg. 18805 (May 4, 1990), Statement of General Policy or  
 Interpretation; Commentary on the Fair Credit Reporting Act;

1           33. Ironically, Equifax touts itself as a leader in cybersecurity, and assures those  
2 who use its services that they can “FEEL CONFIDENT” knowing they are protected by  
3 “daily credit monitoring,” which will purportedly detect “fraud, unexpected charges, [and]  
4 unauthorized credit inquiries.”<sup>11</sup>

5           34. The personal and financial information that Equifax collects on consumers,  
6 including their names, Social Security numbers, credit account information, etc., is  
7 extremely valuable. Indeed, there exists on the internet a “cyber black-market” on which  
8 criminals openly post stolen credit/debit card numbers, Social Security numbers, and other  
9 personal information.

10           35. The FTC has advised consumers to guard this information carefully,<sup>12</sup> noting  
11 that it is “what thieves use most often to commit fraud or identity theft,”<sup>13</sup> and warning that  
12 once they have it, “they can drain your bank account, run up your credit cards, open new  
13 utility accounts, or get medical treatment on your health insurance.”<sup>14</sup> In short, “[f]or  
14 identity thieves, this information is good as gold,”<sup>15</sup> and they have used it to steal  
15 approximately \$112 billion over the past 6 years.<sup>16</sup>

16           36. Given the foregoing, it is not surprising that the PII and credit account  
17 information Defendant Equifax exposed in the subject breach is highly coveted and  
18 aggressively sought by hackers, who use that information for any number of fraudulent  
19 purposes over the course of time; e.g., committing identity theft/fraud, perpetuating

20 \_\_\_\_\_  
21 <sup>11</sup> [https://web.archive.org/web/20161025172308/http://www.equifax.com/home/en\\_us](https://web.archive.org/web/20161025172308/http://www.equifax.com/home/en_us)  
(last visited Sept. 19, 2017).

22 <sup>12</sup> FTC, *Protecting Personal Information: A Guide for Business*, (Oct. 2016) available at  
23 [https://www.ftc.gov/tips-advice/business-center/guidance/protecting-personal-](https://www.ftc.gov/tips-advice/business-center/guidance/protecting-personal-information-guide-business)  
information-guide-business.

24 <sup>13</sup> *Id.*

25 <sup>14</sup> Federal Trade Commission, *Warning Signs of Identity Theft*, available at:  
<https://www.consumer.ftc.gov/articles/0271-warning-signs-identity-theft>.

26 <sup>15</sup> <https://www.identitysafetyservices.com/how-your-identity-is-stolen.php>

27 <sup>16</sup> [https://www.javelinstrategy.com/coverage-area/2016-identity-fraud-fraud-hits-](https://www.javelinstrategy.com/coverage-area/2016-identity-fraud-fraud-hits-inflection-point)  
inflection-point

1 immigration fraud, obtaining false driver's licenses, using the victims' information to  
 2 obtain government benefits, filing tax returns in the victims' name to obtain fraudulent  
 3 refunds, etc.<sup>17</sup>

4 37. According to a study conducted by the U.S. Government Accountability  
 5 Office, "stolen data may be held for a year or more before being used to commit identity  
 6 theft," and "once stolen data have been sold or posted on the Web, fraudulent use of that  
 7 information may continue for years."<sup>18</sup> In other words, "[i]f any of the data was exposed,  
 8 you will be living with that for the rest of your life."<sup>19</sup>

9 38. Thus, Plaintiffs and the Class members are confronted with a substantial and  
 10 continuing risk that they will be the victims of identity theft (if they have not been already),  
 11 and they will have to carefully and constantly monitor their personal and financial  
 12 information, incurring damages associated therewith.

13 39. Once a victim becomes aware he has been the victim of identity theft and has  
 14 suffered financial losses as a result thereof, simply reimbursing those losses does not make  
 15 the victim whole as he must devote significant time (and money) to repairing the damage  
 16 that has been done. In this regard, the Department of Justice's Bureau of Justice Statistics  
 17 confirms that victims of identity theft "reported spending an average of about 7 hours  
 18 clearing up the issues" caused by the theft, with many individuals having to spend much  
 19 longer.<sup>20</sup>

20 40. In addition to being of critical importance to Plaintiffs and the Class  
 21 members, the sensitive financial and personal data exposed in the Equifax Data Breach is

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22 <sup>17</sup> Class Action Reporter, *Chipotle Data Breach Class Action*, available at  
 23 <http://www.classactionsreporter.com/consumer/chipotle-data-breach-class-action>.

24 <sup>18</sup> See GAO, Report to Congressional Requesters, at 29 (June 2007), available at  
 25 <http://www.gao.gov/new.items/d07737.pdf>

26 <sup>19</sup> WRAL.com, *What you need to know about the Equifax data breach* (Sept. 9, 2017),  
 27 <http://www.wral.com/what-you-need-to-know-about-the-equifax-data-breach/16937270/>.

<sup>20</sup> Erika Harrell, *Victims of Identity Theft, 2014*, U.S. DEPT. OF JUSTICE (Sept. 2015),  
 available at <https://www.bjs.gov/content/pub/pdf/vit14.pdf>.

1 the lifeblood of Equifax itself, which currently employs roughly 9,900 people worldwide,  
 2 and which operates, or has investments, in two dozen countries spread across North,  
 3 Central and South America, as well as Europe and Asia.

4 41. Equifax operates in four segments: U.S. Information Solutions,  
 5 International, Workforce Solutions, and Global Consumer Solutions. Its products and  
 6 services are based on databases of consumer and business information derived from various  
 7 sources, including credit, financial assets, telecommunications and utility payments,  
 8 employment, income, demographic and marketing data. Even the Social Security  
 9 Administration uses Equifax to help verify the identity of individuals who set up Social  
 10 Security accounts on [www.ssa.gov](http://www.ssa.gov).

11 42. Equifax has enjoyed wide growth and massive financial success based on its  
 12 use of sensitive financial and personal consumer data. From 2015 to 2016, Equifax  
 13 experienced an 18% growth in operating revenues (to \$3.14 billion). It currently has a  
 14 market capitalization of over \$14 billion, and last year its CEO was rewarded with a total  
 15 compensation package of nearly \$15 million.

16 43. Given the foregoing, it is evident that Equifax has (and had) the necessary  
 17 resources to obtain and implement appropriate security measures to ensure the Equifax  
 18 Data Breach did not occur. Unfortunately, it neglected, refused, or otherwise failed to do  
 19 so.

20 **A. The Equifax Data Breach.**

21 44. On September 7, 2017, Equifax issued a press release announcing that  
 22 “[c]riminals exploited a U.S. website application vulnerability to gain access to certain  
 23 files” in Equifax’s systems.<sup>21</sup> Although the press release was not issued until September,  
 24 Equifax knew about the breach as early as July 29, 2017.

25 \_\_\_\_\_  
 26 <sup>21</sup> <sup>21</sup> Equifax, *Equifax Announces Cybersecurity Incident Involving Consumer*  
 27 *Information* (Sept. 7, 2017), available at <https://investor.equifax.com/news-and-events/news/2017/09-07-2017-213000628>.

1           45. In its September 2017 press release, Equifax acknowledged that the  
 2 information disclosed consisted “primarily” of PII, including names, Social Security  
 3 numbers, birth dates, and addresses and, in some instances, driver’s license numbers. In  
 4 addition, credit card numbers for approximately 209,000 U.S. consumers, and certain  
 5 dispute documents with personal identifying information for approximately 182,000 U.S.  
 6 consumers, were accessed.”<sup>22</sup>

7           46. The breadth of the Equifax Data Breach is stunning, as Defendant itself  
 8 concedes, having admitted that it impacted “approximately 143 million U.S. consumers.”<sup>23</sup>  
 9 Per Seena Gressin, an attorney in the FTC’s Division of Consumer & Business Education,  
 10 “[i]f you have a credit report, there’s a good chance that you’re one of the 143 million  
 11 American consumers whose sensitive personal information was exposed in a data breach  
 12 at Equifax, one of the nation’s three major credit reporting agencies.”<sup>24</sup>

13           47. Ultimately, experts suggest that as much as 44% of the U.S. population will  
 14 be affected, especially with regard to social security numbers, which rarely change over a  
 15 person’s lifetime, and which therefore hold substantial resale value on the black market.<sup>25</sup>

16           **B. Equifax knew it was vulnerable to a data breach, but failed to take**  
 17           **adequate precautions to prevent its occurrence or mitigate its severity.**

18           48. Equifax knew or should have known it was vulnerable to attack based on the  
 19 occurrence of previous data breaches and prior reports that its internal protections were  
 20  
 21  
 22

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23 <sup>22</sup> *Id.*

24 <sup>23</sup> *Id.*

25 <sup>24</sup> FTC, *The Equifax Data Breach: What to Do* (Sept. 8, 2017), available at  
<https://www.consumer.ftc.gov/blog/2017/09/equifax-data-breach-what-to-do>.

26 <sup>25</sup> Lily Hay Newman, *How to Protect Yourself From that Massive Equifax Breach*, WIRED  
 27 (Sept. 7, 2017), available at <https://www.wired.com/story/how-to-protect-yourself-from-that-massive-equifax-breach/>.

1 outdated and weak. Indeed, Equifax has “had problems protecting its customers’  
2 information dating back years.”<sup>26</sup>

3 49. In 2016, for example, Equifax’s W-2 Express website was the subject of a  
4 cyberattack that resulted in the leak of over 400,000 names, addresses, social security  
5 numbers, and other personal information of employees who worked for the retail firm  
6 Kroger. The breach resulted in a lawsuit, which was ultimately dismissed without prejudice  
7 after Equifax agreed to fix the “glaring security issue” that caused the breach (though it is  
8 unclear whether Equifax ever actually did fix the problem).<sup>27</sup>

9 50. Also in 2016, Equifax suffered another data breach involving TALX, one of  
10 its subsidiaries that provides online payroll, HR, and tax services.<sup>28</sup> This breach was  
11 especially alarming because Equifax failed to discover it for almost a year (from April 17,  
12 2016 through March 29, 2017), and because once it did discover the breach, Equifax waited  
13 over a month to disclose it.<sup>29</sup>

14 51. Equifax also suffered data breaches in January 2017, when the credit  
15 information of a “small number” of LifeLock customers was exposed, and in 2013-2014,  
16 when Equifax admitted to the New Hampshire attorney general that an “IP address operator  
17 was able to obtain the credit reports using sufficient personal information to meet Equifax’s  
18 identity verification process.”<sup>30</sup>

19  
20  
21 <sup>26</sup> *A Brief History of Equifax Security Fails*, Forbes.com (Sept. 8, 2017) (available at  
22 <https://www.forbes.com/sites/thomasbrewster/2017/09/08/equifax-data-breach-history/#3d4a854a677c>)

23 <sup>27</sup> *Id.*

24 <sup>28</sup> Krebs On Security, *Fraudsters Exploited Lax Security at Equifax’s TALX Payroll Division* (May 18, 2017), available at <https://krebsonsecurity.com/2017/05/fraudsters-exploited-lax-security-at-equifaxs-talx-payroll-division/>.

25 <sup>29</sup> *Id.*

26 <sup>30</sup> *A Brief History of Equifax Security Fails*, Forbes.com (Sept. 8, 2017) (available at  
27 <https://www.forbes.com/sites/thomasbrewster/2017/09/08/equifax-data-breach-history/#3d4a854a677c>)

1           52. In 2016, security experts discovered “a common vulnerability known as  
2 cross-site scripting (XSS) on the main Equifax website.” XSS is a process by which an  
3 attacker can create a link, which they then send to Equifax customers. If the target clicks  
4 the link and logs into the site, his username and password can be revealed to the attacker,  
5 thereby exposing the target’s personal information.<sup>31</sup>

6           53. Other security experts (namely Kenneth White and Kevin Beaumont) have  
7 probed Equifax’s infrastructure and learned it was susceptible to attacks because it uses old  
8 or discontinued technology. For example, White discovered a link in the source code on  
9 the Equifax consumer sign-in page pointing to Netscape, a web browser that was  
10 discontinued in 2008. Per Beaumont, “Equifax’s infrastructure is a weird mix of IBM  
11 WebSphere, Apache Struts, Java . . . it’s like stepping back in time a decade.”<sup>32</sup>

12           54. Jeff Williams, co-founder and Chief Technical Officer of Contract Security,  
13 concurs, having explained that two flaws in the above-referenced Apache Struts software  
14 “jump out as possibilities” for causing the Equifax data breach; specifically, CVE-2017-  
15 5638, an expression language vulnerability, and CVE-2017-9085, an HTTP request with  
16 an unsafe serialized object.<sup>33</sup>

17           55. Per Apache Struts Vice President Rene Gielen, Equifax was notified of the  
18 CVE-2017-5638 vulnerability in March 2017, and was provided with “clear and simple  
19 instructions of how to remedy the situation.”<sup>34</sup> In the time between (a) learning of  
20 vulnerability and the patch that would have fixed it, and (b) the commencement of the  
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22 <sup>31</sup> *Id.*

23 <sup>32</sup> *Id.*

24 <sup>33</sup> Teri Robinson, *Apache Struts vulnerability likely behind Equifax breach, Congress*  
25 *launches probes* (Sept. 12, 2017), available at <https://www.scmagazine.com/apache-struts-vulnerability-likely-behind-equifax-breach-congress-launches-probes/article/687955/>.

26 <sup>34</sup> Lily Hay Newman, *Equifax Officially Has No Excuse*, WIRED (Sept. 14, 2017),  
27 available at <https://www.wired.com/story/equifax-breach-no-excuse/>.



Equifax Data Breach, Equifax did nothing, thus ensuring it was “relatively easy” for the attackers to gain access to its servers and network.<sup>35</sup>

**C. Equifax concealed the data breach while its executives sold their stock.**

56. As noted previously, Equifax learned of the unauthorized access on July 29, 2017. Rather than immediately notifying those affected, Equifax concealed the existence of the breach for over a month. Its conduct in doing so is in direct contravention of its own recognition that a quick response is of critical importance when personal and financial information has been exposed. Indeed, Equifax states on its website that “[k]nowledge is the best line of defense when it comes to identity theft. The more you know, the better position you’ll be in if you’re ever a victim.”<sup>36</sup> Equifax goes on to instruct that anyone whose personal information has been compromised should “[s]tart monitoring all your accounts.”<sup>37</sup> It also admits that: (a) “the sooner you find out about the problem, the less time has lapsed in which the thief can use your identity;” and (b) “[t]he longer the individual’s personal information is used unnoticed, the more damage is done and the longer it may take to clean up.”<sup>38</sup> Equifax concludes by advising consumers to “act quickly, take good notes, and stay organized. Make sure to take care of yourself emotionally, as identity theft has many [effects] on victims more far-reaching than the most widely known financial impact.”<sup>39</sup>

57. Instead of acting quickly to alert the public of its latest massive data breach, top Equifax executives – namely Chief Financial Officer John Gamble, Jr., Workforce Solutions President Rodolfo Ploder, and U.S. Information Solutions President Joseph Loughran – executed over \$1.8 million in stock options approximately two days after

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<sup>35</sup> *Id.*

<sup>36</sup> Equifax, <https://www.equifax.com/personal/> (Learn about Identity Theft tab).

<sup>37</sup> <https://blog.equifax.com/identity/my-identity-has-been-stolen-now-what/>

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

Equifax learned of the breach, but long before it publicly reported its occurrence.<sup>40</sup> None of the accompanying regulatory filings lists the transactions as being part of 10b5-1 scheduled trading plans.

**D. The post-breach monitoring Equifax has offered is inadequate and deceiving.**

58. After the subject data breach occurred, Equifax told its customers it had “established a dedicated website, [www.equifaxsecurity2017.com](http://www.equifaxsecurity2017.com), to help consumers determine if their information has been potentially impacted” by the breach and to enable them “to sign up for credit file monitoring and identity theft protection.”<sup>41</sup>

59. The Equifax breach website says that, in addition to people impacted by the data breach, Equifax is also offering one year of free TrustedID Premier services to anyone in the United States, “[r]egardless of whether your information may have been impacted.”<sup>42</sup>

60. By encouraging all consumers to sign up for TrustedID Premier, Equifax stands to profit significantly from the breach it allowed to happen, and it exposes consumers to additional risks.

61. In order to register for Equifax’s post-breach monitoring, consumers are required to provide six digits of their social security number, which is problematic because an individual’s entire Social Security Number can be ascertained with just those six digits. To determine an individual’s entire Social Security number an attacker would only have to figure out the first three digits, which is not a difficult task.

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<sup>40</sup> Todd Haselton & Yen Nee Lee, *Three Equifax executives sold \$2 million worth of shares days after cyberattack*, CNBC (Sept. 7, 2017), available at <https://www.cnbc.com/2017/09/07/equifax-cyberattack-three-executives-sold-shares-worth-nearly-2-million-days-after-data-breach.html>.

<sup>41</sup> Equifax, *Equifax Announces Cybersecurity Incident Involving Consumer Information* (Sept. 7, 2017), available at <https://investor.equifax.com/news-and-events/news/2017/09-07-2017-213000628>.

<sup>42</sup> *Id.*

1           62. Social Security numbers consist of nine digits made up of three parts; the  
2 first set of three digits is the Area Number, the second set of two digits is the Group  
3 Number, and the final set of four digits is the Serial Number.

4           63. Part one, the Area Number, indicates the geographical region in which the  
5 person applied for a social security card. Prior to 1972, states had field offices that issued  
6 social security cards and the Area Number assigned represented the state in which the card  
7 was issued. In 1972, however, the Social Security Administration began issuing cards from  
8 a central location and stopped using the state-based Area Numbers. Since 1972, the Area  
9 Number is based on the zip code in the mailing address provided on the original application  
10 for the Social Security card. Through a little digging or a credit report listing all residences  
11 obtained from the Equifax data breach, an immoral actor could easily piece together the  
12 full Social Security number.

13           **E. Over 140 million Americans, including Plaintiffs and the other Class**  
14           **members, suffered injuries as a direct and proximate result of the**  
15           **Equifax data breach.**

16           64. Because of the nature of the information exposed by the Equifax Data Breach  
17 (i.e., Social Security numbers, birth dates, driver's license numbers, consumer credit  
18 information), Plaintiffs and the Class members face an imminent, continuing, and  
19 substantial risk of identity theft. In addition to fears commonly associated with such  
20 identity theft (e.g., fraudulent credit card use, the opening of unauthorized accounts, harm  
21 to a credit score) there are additional consequences, including medical identity theft (fake  
22 IDs used to pay for procedures and surgeries), tax fraud (filing false tax returns to profit  
23 from refunds), and synthetic identity theft (combining information from multiple victims  
24 to create a new identity).

25           65. As a direct and proximate result of the Equifax data breach, Plaintiffs and the  
26 other Class members have suffered injuries, including but not limited to: (a) theft or misuse  
27

1 of their personal and financial information; (b) substantial immediate and continuing  
2 likelihood for identity theft/fraud; (c) costs associated with the detection and prevention of  
3 identity theft/fraud and unauthorized use of their personal information and/or financial  
4 accounts; (d) unauthorized charges on their debit and credit accounts; (e) lost use of, or  
5 limitation of access to, account funds and costs associated therewith, including missed  
6 payments on bills or loans, late charges and fees, negative effects on credit (e.g., decreased  
7 credit scores and adverse credit notations), etc.; (f) loss of productivity and other costs  
8 associated with efforts necessary to ameliorate or mitigate the present and future  
9 consequences of the Equifax Data Breach, including watching for and finding fraudulent  
10 charges, cancelling and reissuing cards, purchasing credit monitoring and identity theft  
11 protection services, imposition of withdrawal and purchase limits on compromised  
12 accounts, and the stress, nuisance and annoyance of dealing with all issues resulting from  
13 the Equifax Data Breach; (g) damages to, and diminution in value of, their personal and  
14 financial information, which was entrusted to Equifax for the sole purpose of reporting  
15 and/or monitoring their credit profiles and with the mutual understanding that Equifax  
16 would safeguard that information from access, theft, or misuse; (h) money paid for products  
17 or services purchased from Equifax (e.g., credit monitoring, credit score inquiry) prior to  
18 the Equifax Data Breach, as Plaintiffs and the Class members would not have purchased  
19 such products or services had Equifax disclosed its lack of adequate security systems,  
20 processes, and protocols to reasonably safeguard their personal and financial information;  
21 and (i) continued substantial risk to their personal and financial information, which remains  
22 in the possession of Equifax and which is subject to further breaches so long as Equifax  
23 fails to undertake appropriate and adequate measures to protect it.

**CLASS ALLEGATIONS**

66. Plaintiffs bring this action both on behalf of themselves and all others similarly situated (the “Class”) pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2) and (b)(3). The Class is defined as follows:

All residents of California, Colorado, Florida, Illinois, Minnesota, New Hampshire, New York, and Wisconsin whose PII and/or credit account information was stolen or exposed in the Equifax Data Breach from May of 2017 through the present.

67. Following further investigation as and discovery in the case, the Class definition, including the Class Period, may be modified by amendment, and Plaintiffs reserve the right to join additional class representatives.

68. *Numerosity.* The Class is so numerous that joinder of all members is impracticable. Even though the exact number of Class members is unknown at this time, Equifax has represented that at least 143 million individuals have been affected by the Equifax Data Breach, and it has admitted that their identities can be readily ascertained from records already in its possession.

69. *Ascertainability.* All members of the purposed Classes are readily ascertainable. Equifax has access to addresses and other contact information for millions of Class members, which can be used for providing notice to many Class members.

70. *Typicality.* Plaintiffs’ claims are typical of the claims of the other members of the Class because the events and conduct that give rise to Plaintiffs’ claims are identical to those that give rise to the claims of every other Class member. Plaintiffs and the Class members were similarly affected by the Equifax’s uniform wrongful and unauthorized disclosure of personal, confidential information to unauthorized third parties.

71. *Adequacy.* Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel competent and experienced in class action and consumer

1 protection litigation. Plaintiffs' interests are coincident with, and not antagonistic to, the  
2 interests of the Classes.

3 72. *Commonality.* Common questions of law and fact exist as to all members of  
4 the Class, and these common questions predominate over any questions solely affecting  
5 individual Class members.

6 73. Plaintiffs and members of the Class have all sustained damages during the  
7 Class Period as a result of having their personal, confidential information disclosed to  
8 unauthorized third parties by Equifax. The conduct alleged herein, the impact of such  
9 conduct, and the relief sought are all issues or questions that are common to Plaintiffs and  
10 the Class.

11 74. The questions of law and fact common to the Class include, but are not  
12 limited to:

- 13 a. whether Equifax engaged in the wrongful conduct alleged herein;
- 14 b. whether Equifax owed a duty to Plaintiffs and members of the Class  
15 to adequately protect their personal, confidential information and to  
16 provide timely and accurate notice of the Equifax Data Breach to  
17 Plaintiffs and members of the Class;
- 18 c. whether Equifax breached its duty to protect the personal, confidential  
19 information of Plaintiffs and members of the Class by failing to  
20 provide adequate security;
- 21 d. whether Equifax breached its duty to provide timely and accurate  
22 notice to Plaintiffs and members of the Class of the Equifax Data  
23 Breach;
- 24 e. whether Equifax knew or should have known that its systems were  
25 vulnerable to attack;
- 26 f. whether Equifax's conduct, including its failure to act, resulted in, or  
27 was the proximate cause of, the breach of its systems, resulting in the  
loss of millions of individuals' personal, confidential data;

- 1           g.       whether Equifax unlawfully failed to inform Plaintiffs and members  
2                   of the Class that it did not maintain security systems, practices, and  
3                   protocols adequate to reasonably safeguard their personal,  
4                   confidential data;
- 5           h.       whether Equifax's conduct constituted a breach of the FCRA;
- 6           i.       whether Equifax's conduct constituted unfair methods of competition  
7                   or was deceptive, unfair, or otherwise unlawful;
- 8           j.       whether Plaintiffs and members of the Class were injured by  
9                   Equifax's conduct (or failure to act), and, if so, the appropriate class-  
10                  wide measure of damages; and
- 11          k.       whether Plaintiffs and members of the Class are entitled to equitable  
12                  relief.

13           75.     *Superiority.* A class action is superior to other available methods for the fair  
14                  and efficient adjudication of this controversy because joinder of all members of the Classes  
15                  is impracticable.

16           76.     The prosecution of separate actions by individual members of the Class  
17                  would impose heavy burdens upon the courts and the parties, and would create a risk of  
18                  inconsistent or varying adjudications of the questions of law and fact common to the Class.  
19                  A class action would achieve substantial economies of time, effort, and expense, and would  
20                  assure uniformity of decision as to persons similarly situated without sacrificing procedural  
21                  fairness. There will be no material difficulty in the management of this action as a class  
22                  action on behalf of the Class. Although the laws of different states are implicated in this  
23                  Complaint, these laws are substantially similar to one another and can be grouped together  
24                  in manageable categories.

25           77.     Because the above common questions of law or fact predominate over any  
26                  questions affecting individual members of the Class, and because a class action is superior  
27                  to other available methods for the fair and efficient adjudication of the controversy, class  
28                  certification is appropriate under Fed. R. Civ. P. 23(a) and (b)(3).



1           78. Certification of the Class is also appropriate pursuant to Fed. R. Civ. P.  
2 23(b)(1), (b)(2), and/or (c)(4).

3                           **CLAIMS FOR RELIEF**  
4                           **FIRST CLAIM FOR RELIEF**  
5                           **Negligence**

6           79. Plaintiffs incorporate and reallege, as though fully set forth herein, each and  
7 every allegation set forth in the preceding paragraphs of this Complaint.

8           80. Equifax owed a duty of care to Plaintiffs and the Class members to exercise  
9 reasonable care in obtaining, retaining, securing, safeguarding, and protecting their  
10 personal and financial information in its possession from being compromised, lost, stolen,  
11 accessed, or misused by unauthorized persons. This duty included, among other things,  
12 designing, maintaining, and testing Equifax's security system to ensure that the personal  
13 and financial information of Plaintiffs and the Class members was adequately secured and  
14 protected.

15           81. Equifax owed a duty of care to Plaintiffs and the Class members to  
16 implement processes that would detect a breach of its security system in a timely manner  
17 and to timely act upon warnings and alerts, including those generated by its own security  
18 systems.

19           82. Equifax owed a duty of care to Plaintiffs and the Class members to provide  
20 security, including security consistent with industry standards and requirements, to ensure  
21 that its computer systems and networks, and the personnel responsible for them, adequately  
22 protected the personal and financial information of Plaintiffs and the Class members.

23           83. Equifax owed a duty of care to Plaintiffs and the Class members because they  
24 were foreseeable and probable victims of any inadequate security practices. Equifax  
25 solicited, gathered, and stored the personal and financial data of Plaintiffs and the Class  
26 members to facilitate credit reports and monitoring. Equifax knew or should have known  
27

1 it inadequately safeguarded such information and that hackers routinely attempt to access  
2 this valuable data without authorization. Equifax had prior notice that its systems were  
3 inadequate by virtue of earlier breaches, but continued to utilize those inadequate systems  
4 to the ultimate detriment of its customers, including Plaintiffs, the Class members, and  
5 nearly half of the U.S. population. Equifax knew or should have known that a breach of its  
6 systems would cause damages to Plaintiffs and the Class members, and Equifax had a duty  
7 to adequately protect such sensitive personal and financial information.

8       84. Equifax owed a duty of care to timely and accurately disclose to Plaintiffs  
9 and the Class members that their personal and financial information had been or was  
10 reasonably believed to have been compromised. Timely disclosure was required,  
11 appropriate, and necessary so that, among other things, Plaintiffs and the Class members  
12 could take appropriate measures to avoid unauthorized charges to their credit or debit card  
13 accounts, cancel or change usernames and passwords on compromised accounts, monitor  
14 their account information and credit reports for fraudulent activity, contact their banks or  
15 other financial institutions that issue their credit or debit cards, obtain credit monitoring  
16 services, and take other steps to mitigate or ameliorate the damages caused by Equifax's  
17 misconduct.

18       85. Equifax knew or should have known of the risks inherent in collecting and  
19 storing the personal and financial information of Plaintiffs and the Class members, and of  
20 the critical importance of providing adequate security of that information.

21       86. Equifax's conduct created a foreseeable risk of harm to Plaintiffs and the  
22 Class members. Equifax's misconduct included, but was not limited to, its failure to take  
23 steps to prevent the Equifax Data Breach from occurring, its failure to stop the breach once  
24 it started, its failure to take appropriate action to mitigate the effects of the breach, and its  
25 failure to timely inform the public, including Plaintiffs and the Class members, of its  
26 occurrence.

1           87.     Equifax breached the duties it owed to Plaintiffs and the Class members by  
2 failing to exercise reasonable care and implement adequate security systems, protocols,  
3 and practices sufficient to protect the personal and financial information of Plaintiffs and  
4 the Class members.

5           88.     Equifax breached the duties it owed to Plaintiffs and the Class members by  
6 failing to properly implement technical systems or security practices that could have  
7 prevented the loss of data at issue.

8           89.     Equifax breached the duties it owed to Plaintiffs and the Class members to  
9 timely and accurately disclose that their personal and financial information had been or  
10 was reasonably believed to have been stolen or otherwise compromised.

11           90.     But for Equifax's wrongful and negligent breach of the duties owed to  
12 Plaintiffs and the Class members, their personal and financial information would not have  
13 been stolen or otherwise compromised.

14           91.     The injury and harm suffered by Plaintiffs and the Class members, as set  
15 forth above, was the reasonably foreseeable result of Equifax's failure to exercise  
16 reasonable care in safeguarding and protecting the personal and financial information of  
17 Plaintiffs and the Class members. Equifax knew or should have known that its systems and  
18 technologies for processing, securing, and safeguarding the personal and financial  
19 information of Plaintiffs and the Class were inadequate and vulnerable to being breached  
20 by hackers.

21           92.     Plaintiffs and the Class members suffered injuries and losses described  
22 herein as a direct and proximate result of Equifax's conduct resulting in the Equifax Data  
23 Breach, including Equifax's lack of adequate reasonable and industry-standard security  
24 measures. Had Equifax implemented such adequate and reasonable security measures,  
25 Plaintiffs and the Class members would not have suffered the injuries alleged, as the  
26 Equifax Data Breach would likely have not occurred.

1           93.     Equifax’s conduct also warrants moral blame, as Equifax continued to take  
 2 possession of Plaintiffs’ and the Class members’ personal and financial information in  
 3 connection with its services at a time it knew, but failed to disclose, that it had inadequate  
 4 systems to reasonably protect such information. Equifax continued to take possession  
 5 Plaintiffs’ and the Class members’ personal and financial information after it knew the  
 6 Equifax Data Breach had occurred and was ongoing, and it failed to provide timely and  
 7 adequate notice to Plaintiffs and the Class members of that breach as required by law.

8           94.     Holding Equifax accountable will further the policies underlying negligence  
 9 law and will require Equifax (while also encouraging similar companies that obtain and  
 10 retain sensitive consumer personal and financial information) to adopt, maintain, and  
 11 properly implement reasonable, adequate and industry-standard security measures to  
 12 protect such customer information.

13           95.     As a direct and proximate result of Equifax’s negligent conduct, Plaintiffs  
 14 and the Class have suffered injury and are entitled to damages in the amount to be proven  
 15 at trial.

16                   **SECOND CLAIM FOR RELIEF**  
 17                   **Willful Violation of the FCRA**

18           96.     Plaintiffs incorporate and reallege each and every allegation set forth in the  
 19 preceding paragraphs of this Complaint as though fully set forth herein.

20           97.     The FCRA was enacted “to require that consumer reporting agencies adopt  
 21 reasonable procedures for meeting the needs of commerce for consumer credit, personnel,  
 22 insurance, and other information in a manner which is fair and equitable to the consumer,  
 23 with regard to the confidentiality, accuracy, relevancy, and proper utilization of such  
 24 information in accordance with the requirements of this [Act].” 15 U.S.C. § 1681(b).

25           98.     Plaintiffs, the Class members, and Defendant Equifax are all “persons”  
 26 within the meaning of 15 U.S.C. § 1681a(b).

1           99. Plaintiff and the Class members are “consumers” within the meaning of 15  
2 U.S.C. § 1681a(c).

3           100. Defendant Equifax is a “person which, for monetary fees . . . regularly  
4 engages in whole or in part in the practice of assembling or evaluating consumer credit  
5 information or other information on consumers for the purpose of furnishing consumer  
6 reports to third parties, and which uses any means or facility of interstate commerce for the  
7 purpose of preparing or furnishing consumer reports.” As such, Defendant Equifax is a  
8 “consumer reporting agency” within the meaning of 15 U.S.C. §1681a(f).

9           101. As a CRA, Equifax is statutorily required to “maintain reasonable procedures  
10 designed to . . . limit the furnishing of consumer reports to the purposes listed under section  
11 604 [15 USCS § 1681b].” 15 U.S.C. § 1681e(a).

12           102. Under the FCRA, the term “consumer report” means “any written, oral, or  
13 other communication of any information by a consumer reporting agency bearing on a  
14 consumer’s credit worthiness, credit standing, credit capacity, character, general  
15 reputation, personal characteristics, or mode of living which is used or expected to be used  
16 or collected in whole or in part for the purpose of serving as a factor in establishing the  
17 consumer’s eligibility for - - (A) credit or insurance to be used primarily for personal,  
18 family or household purposes; (B) employment purposes; or (C) any other purpose  
19 authorized under section 604 [15 U.S.C. § 1681b].” 15 U.S.C. § 1681a(d)(1)(A)-(C).

20           103. Because the information Equifax disclosed and communicated to third  
21 parties in the Equifax Data Breach included information bearing on Plaintiffs’ and the Class  
22 members’ “credit worthiness, credit standing, credit capacity, character, general reputation,  
23 personal characteristics, or mode of living,” and because Equifax had collected that  
24 information “in whole or in part for the purpose of serving as a factor in establishing [their]  
25 eligibility for - - credit or insurance to be used primarily for personal, family or household  
26

1 purposes,” the disclosures Equifax made in the Equifax Data Breach constitute “credit  
2 reports” within the meaning of the FCRA.

3 104. Pursuant to the FCRA, Equifax “may furnish a consumer report” only under  
4 certain statutorily enumerated circumstances, “and no other.” 15 U.S.C. § 1681b(a). Those  
5 circumstances (which are set forth at 15 U.S.C. § 1681b) do not include furnishing  
6 consumer reports to hackers, cyber attackers, or other unauthorized/unidentified third  
7 parties.

8 105. Equifax willfully violated 15 U.S.C. § 1681e(a) by failing to “maintain  
9 reasonable procedures designed to . . . limit the furnishing of consumer reports to the  
10 purposes listed under section 604 [15 U.S.C. § 1681b],” and it willfully violated 15 U.S.C.  
11 § 1681b by failing to take reasonable measures to protect the sensitive consumer credit  
12 information of Plaintiffs and the Class members,<sup>43</sup> and/or by furnishing consumer reports  
13 under circumstances other than those specifically authorized by the FCRA.

14 106. An illustrative, but by no means exhaustive, list of Equifax’s willful conduct  
15 (which is set forth in detail in the preceding paragraphs) includes the following: (a) Equifax  
16 knew about the value placed on the information it exposed in Equifax Data Breach and the  
17 corresponding importance of protecting it from unauthorized disclosure; (b) Equifax knew  
18 of its legal obligations to protect the information it exposed in the Equifax Data Breach;  
19 (c) Equifax knew – by virtue of having been the target of several previous successful  
20 hacks/cyber-attacks that resulted in the disclosure of the same type of sensitive information  
21 – that is security systems, procedures, and protocols are (and have long been) vulnerable

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22 <sup>43</sup> Indeed, the FTC has made it clear that entities which “fail[] to take reasonable  
23 measures to protect sensitive consumer information” violate the FCRA, and that it “will  
24 call for imposition of civil penalties against resellers of consumer reports who do not take  
25 adequate measures to fulfill their obligations to protect information contained in  
26 consumer reports, as required by the Fair Credit Reporting Act (‘FCRA’).”  
27 [https://www.ftc.gov/sites/default/files/documents/public\\_statements/statement-  
commissioner-brill-which-chairman-leibowitz-and-commissioners-rosch-and-ramirez-  
join/110125settlementone.pdf](https://www.ftc.gov/sites/default/files/documents/public_statements/statement-commissioner-brill-which-chairman-leibowitz-and-commissioners-rosch-and-ramirez-join/110125settlementone.pdf)

1 and inadequate to protect the sensitive information with which it has been entrusted; (d)  
 2 Equifax knew about the vulnerability/inadequacy of its security systems by virtue of having  
 3 been previously provided with “clear and simple instructions of how to remedy the  
 4 situation;”<sup>44</sup> and (e) despite the foregoing knowledge Equifax did nothing, thus ensuring it  
 5 was “relatively easy” for attackers to gain access to its servers and network.<sup>45</sup> Additionally,  
 6 once the attackers gained access and the Equifax Data Breach commenced, Equifax, with  
 7 knowledge of the fact that the breach had occurred, waited for over a month to report it to  
 8 the public, during which time its top executives sold their stock.

9 107. Ultimately, Equifax’s willful conduct provided a means for unauthorized  
 10 third parties to obtain consumer reports relative to Plaintiffs and the Class members, and  
 11 Equifax furnished those consumer reports for purposes not authorized by, and in violation  
 12 of, the FCRA.

13 108. As a direct and proximate result of Equifax’s willful violations of the FCRA,  
 14 Plaintiff and the Class members are entitled to recover “any actual damages sustained . . .  
 15 of not less than \$100 and not more than \$1,000;” to recover “such amount of punitive  
 16 damages as the court may allow;” and to recover “the costs of the action together with  
 17 reasonable attorney’s fees as determined by the court.” 15 U.S.C. § 1681n(a)(1)-(3).

18 **THIRD CLAIM FOR RELIEF**  
 19 **Negligent Violation of the FCRA**

20 109. Plaintiffs incorporate and reallege each and every allegation set forth in the  
 21 preceding paragraphs of this Complaint as though fully set forth herein.

22 110. Equifax was negligent in failing to “maintain reasonable procedures designed  
 23 to . . . limit the furnishing of consumer reports to the purposes listed” under 15 U.S.C. §  
 24 1681b, in failing to take reasonable measures to protect the sensitive consumer credit  
 25

26 <sup>44</sup> <https://www.wired.com/story/equifax-breach-no-excuse/>

27 <sup>45</sup> *Id.*



1 information of Plaintiffs and the Class members, in furnishing consumer reports under  
2 circumstances other than those specifically authorized by the FCRA, and in failing to  
3 timely notify the public and/or take appropriate remedial action after becoming aware of  
4 the breach.

5 111. Equifax's negligent acts and omissions provided a means for unauthorized  
6 third parties to obtain consumer reports relative to Plaintiffs and the Class members, and  
7 Equifax furnished those consumer reports for purposes not authorized by, and in violation  
8 of, the FCRA.

9 112. An illustrative, but by no means exhaustive, list of Equifax's negligent  
10 conduct (which is set forth in detail in the preceding paragraphs) includes the following:  
11 (a) Equifax knew or should have known about the value placed on the information it  
12 exposed in Equifax Data Breach and the corresponding importance of protecting it from  
13 unauthorized disclosure; (b) Equifax knew or should have known of its legal obligations to  
14 protect the information it exposed in the Equifax Data Breach; (c) Equifax knew or should  
15 have known – by virtue of having been the target of several previous successful  
16 hacks/cyber-attacks that resulted in the disclosure of the same type of sensitive information  
17 – that is security systems, processes, and protocols are (and have long been) vulnerable and  
18 inadequate to protect the sensitive information with which it has been entrusted; (d)  
19 Equifax knew or should have known about the vulnerability/inadequacy of its security  
20 systems, processes, and protocols, by virtue of having previously been provided with “clear  
21 and simple instructions of how to remedy the situation;”<sup>46</sup> and (e) despite the foregoing  
22 knowledge Equifax did nothing, thus ensuring it was “relatively easy” for attackers to gain  
23 access to its servers and network.<sup>47</sup> Additionally, once the attackers gained access and the  
24 Equifax Data Breach commenced, Equifax, with full knowledge of the fact that the breach  
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26 <sup>46</sup> <https://www.wired.com/story/equifax-breach-no-excuse/>

27 <sup>47</sup> *Id.*

1 had occurred, waited for over a month to report it to the public, during which time its top  
2 executives sold their stock.

3 113. As a direct and proximate result of Equifax's negligent violations of the  
4 FCRA, Plaintiff and the Class members are entitled to recover "any actual damages  
5 sustained," and to recover "the costs of the action together with reasonable attorney's fees  
6 as determined by the court." 15 U.S.C. § 1681o(a)(1)-(2).

7 **FOURTH CLAIM FOR RELIEF**  
8 **Violations of State Consumer Protection Laws**

9 114. Plaintiffs incorporate and reallege each and every allegation set forth in the  
10 preceding paragraphs of this Complaint as though fully set forth herein.

11 115. Equifax engaged in conduct that was intended to result, and that did result,  
12 in the sale of goods or services to consumers, including Plaintiffs and the Class members.

13 116. Equifax is engaged in, and its acts and omissions affect, trade and commerce.  
14 Equifax undertook those acts and omissions (which are set forth at length in the preceding  
15 paragraphs), in the course of its business of marketing, offering for sale, and selling goods  
16 or services throughout the United States, including in this District.

17 117. By reason of the conduct and omission of material facts described in this  
18 Complaint, Equifax violated state consumer protection laws which prohibit entities like  
19 Equifax from representing that goods or services have sponsorship, approval,  
20 characteristics, uses or benefits that they do not have, from representing that goods or  
21 services are of a particular standard, quality, or grade, if they are of another, and from  
22 engaging in any conduct that creates a likelihood of confusion or misunderstanding.

23 118. By reason of the conduct and omission of material facts described in this  
24 Complaint, Equifax violated state consumer protection laws that prohibit unfair methods  
25 of competition and unfair, deceptive, unconscionable, fraudulent or unlawful trade acts or  
26 practices; specifically:

- California Consumer Legal Remedies Act – Cal. Civ. Code § 1750 *et seq.*, including Cal. Civ. Code § 1770(a)(5) and (7);<sup>48</sup>
- California Unfair Competition Law – Cal. Bus. & Prof. Code § 17200 *et seq.*;
- Colorado Consumer Protection Act – Colo. Rev. Stat. § 6-1-101 *et seq.*, including Colo. Rev. Stat. § 105(1)(b), (e), and (g);
- Florida Deceptive and Unfair Trade Practices Act – Fla. Stat. Ann. § 501.204(1);
- Illinois Consumer Fraud and Deceptive Trade Practices Act – 815 ILCS § 505/2;
- Illinois Deceptive Trade Practices Act – 815 Ill. Stat § 510/2(a)(5), (7) and (12);
- Minnesota Consumer Fraud Act – Minn. Stat. § 325F.69, subd. 1;
- Minnesota Uniform Deceptive Trade Practices Act – Minn. Stat. § 325D.44, subd. 1(5), (7), and (13);
- New Hampshire Consumer Protection Act – N.H. Rev. Stat. § 358-A:2(V) and (VII);
- N.Y Gen. Bus. Law § 349; and
- Wisconsin Deceptive Trade Practices Act – W.S.A. §100.20(1).

119. As a direct and proximate result of Equifax’s violation of the foregoing statutes, Plaintiffs and the Class members have suffered damages as set forth above, and as to be proved at trial.

120. Plaintiffs bring this action on behalf of themselves and all others similarly situated for the relief requested and for the public benefit, in order to promote the public interest in the provision of truthful, non-deceptive information, and to protect the public

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<sup>48</sup> Plaintiffs do not seek monetary damages at this point in connection with the CLRA claim, but limit their request to injunctive relief. Plaintiffs will seek to amend their Complaint to seek damages in accordance with the CLRA, if Defendant does not correct the harms it has caused after Plaintiffs have provided notice pursuant to California Civil Code §1782.

1 from Equifax's unfair methods of competition and its unfair, deceptive, fraudulent,  
 2 unconscionable or otherwise unlawful conduct. Equifax's conduct and omission of  
 3 material facts, as described in this Complaint, has had widespread impact on the public at  
 4 large, including causing injury and ascertainable losses of money or property to over 140  
 5 million persons across the United States.

6 **FIFTH CLAIM FOR RELIEF**  
 7 **Violations of State Data Breach Statutes**

8 121. Plaintiffs incorporate and reallege each and every allegation set forth in the  
 9 preceding paragraphs of this Complaint as though fully set forth herein.

10 122. Legislatures in each of the States listed below have enacted statutes that  
 11 require any person or entity who conducts business that results in the ownership or  
 12 licensing of computerized data that includes personal information to protect that  
 13 information and to disclose any breach of its security system to any resident whose personal  
 14 information has been acquired by an unauthorized person. Those statutes further require  
 15 that the disclosure of the breach be made expediently and without unreasonable delay.

16 123. As noted previously, Equifax learned of the Equifax Data Breach on July 29,  
 17 2017, but it concealed information regarding its occurrence for over a month (until  
 18 September 7, 2017), during which time top Equifax executives executed over \$1.8 million  
 19 in stock options.<sup>49</sup> Had Equifax provided timely and accurate notice of the data breach,  
 20 Plaintiffs and the Class members would have been able to avoid or mitigate the injuries  
 21 and damages they have suffered by reason of its occurrence.

22 124. The Equifax Data Breach constitutes a breach of the Equifax security system  
 23 within the meaning of the statutes identified below, and the information disclosed in the  
 24 Equifax Data Breach was covered by these statutes. Accordingly, Equifax's failure to  
 25

26 <sup>49</sup> [https://www.cnbc.com/2017/09/07/equifax-cyberattack-three-executives-sold-shares-](https://www.cnbc.com/2017/09/07/equifax-cyberattack-three-executives-sold-shares-worth-nearly-2-million-days-after-data-breach.html)  
 27 [worth-nearly-2-million-days-after-data-breach.html](https://www.cnbc.com/2017/09/07/equifax-cyberattack-three-executives-sold-shares-worth-nearly-2-million-days-after-data-breach.html)

1 provide timely and accurate notice of the Equifax Data Breach constitutes a violation of  
2 the following statutes:

- 3 • Cal. Civ. Code § 1798.82(a), *et seq.*;
- 4 • Colo. Rev. Stat. § 6-1-716(2), *et seq.*;
- 5 • Fla. Stat. § 501.171(4), *et seq.*;
- 6 • 815 ILCS § 530/10(a), *et seq.*;
- 7 • Minn. Stat. Ann. § 325E.61(a), *et seq.*;
- 8 • N.H. Rev. Stat. §359-C:20(1)(a), *et seq.*;
- 9 • N.Y. Gen. Bus. Law 899-aa, *et seq.*; and
- 10 • Wis. Stat. § 134.98(2), *et seq.*

11 125. As a direct and proximate result of Equifax's violation of the foregoing  
12 statutes, Plaintiffs and the Class members have suffered damages as set forth above, and as  
13 to be proved at trial.

14 126. Plaintiffs, on behalf of themselves and all others similarly situated, seek all  
15 remedies available under their respective state data breach statutes, including but not  
16 limited to damages suffered by Plaintiffs and the Class members as alleged previously;  
17 equitable relief, including injunctive relief; and reasonable attorney's fees and costs, as  
18 provided by law.

### 19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs respectfully request that the Court:

21 A. Determine that the claims alleged herein may be maintained as a Class action  
22 under Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, and Order that  
23 reasonable notice of this action be given to members of the Classes;

24 B. Appoint Plaintiffs as Class Representatives for the Class and Counsel of  
25 Record as Lead Class counsel;

1 C. Award Plaintiffs and the Class appropriate relief to the maximum extent  
2 allowed, and enter a joint and several judgment in favor of Plaintiffs and the Class  
3 members, including actual and statutory damages (except that Plaintiffs do not seek  
4 damages on their CLRA claim at this time; see footnote 48, above);

5 D. Award Plaintiffs and the Class equitable, injunctive and declaratory relief as  
6 maybe appropriate under applicable state laws. Plaintiffs, on behalf of the Class, seek  
7 appropriate injunctive relief designed to ensure against the recurrence of a data breach by  
8 requiring Equifax to adopt and implement the best security data practices to safeguard  
9 customers' financial and personal information, which would include, without limitation,  
10 an order and judgment directing Equifax to: (1) encrypt and protect all data; and (2)  
11 directing Equifax to provide to Plaintiffs and Class members extended credit monitoring  
12 services.

13 E. Award Plaintiffs and the members of the Class pre- and post- judgment  
14 interest as provided by law, and that such interest be awarded at the highest legal rate from  
15 and after the date of service of this Complaint;

16 F. Award Plaintiffs and the members of the Class their costs of suit, including  
17 reasonable attorneys' fees, as provided by law; and,

18 G. Award Plaintiffs and members of the Class such other and further relief as  
19 the case may require and the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury, including pursuant to Federal Rule of Civil Procedure 38(b), on all issues where a right to such trial exists.

Respectfully submitted,

Dated: September 29, 2017.

**SHULMAN LAW**

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